In the High Court of Punjab and Haryana at Chandigarh

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Date of decision: 11.8.2006

Shiv Charan and others. ..Appellants

Versus

Pyare Lal ..Respondent

Coram: Hon'ble Mr.Justice Mahesh Grover

Present: Mr.R.K.Jain,Advocate
for the appellant
Mr.Shiv Kumar,Advocate
for the respondent

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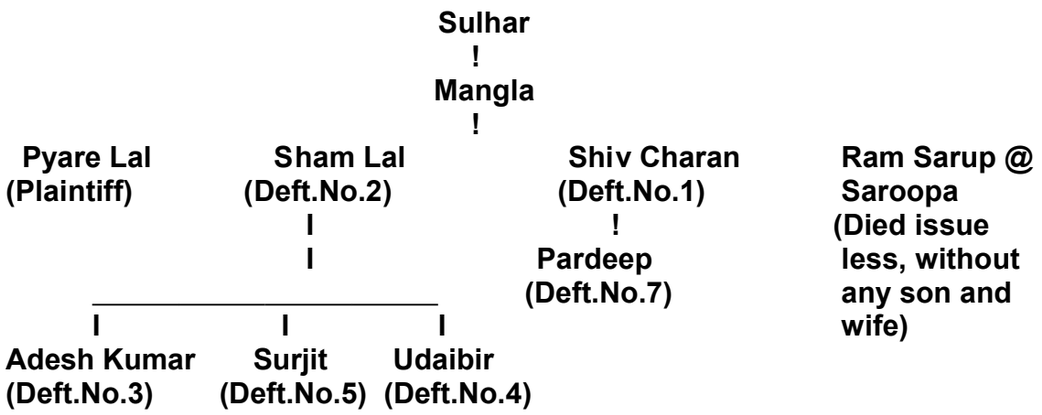
Mahesh Grover,J.(Oral)

The brief facts of the case are that the plaintiff-respondent filed a suit alleging that he alongwith Sham Lal(defendant No.2) and Adesh Kumar (respondent No.3), and late Ram Swarup were the co-owners/co-sharers of the property and were in actual physical possession of the same. Ram Swarup is said to have died on 16.4.1995 leaving the plaintiff-respondent and Shiv Charan and Sham Lal as the only legal heirs and his successors. According to the plaintiff-respondent, he had inherited 1/3rd share of the property of Ram Swarup. A decree was suffered in a Civil Suit bearing No.185 of 20.3.1992.

To appreciate the controversy which has been raised by the plaintiff-respondent in the suit, it is necessary to rely on the pedigree table,which is as under:-



In dispute is the property left behind by Ram Swarup, who is stated to have died issue less. Ram Swarup is alleged to have suffered a collusive decree on 22.4.1992 in favour of Adesh Kumar, Udaibir, Sarjit and Pradeep, who were arrayed as defendant Nos.3,4,5 and 7 respectively by the plaintiff-respondent. It was pleaded by the plaintiff-respondent that since Ram Swarup was his brother and had died issueless, therefore, he was entitled to his share in the property of Ram Swarup and that the collusive decree suffered by him could not bind the plaintiff-respondent. The decree was bad inasmuch as there was no family settlement and that the decree involved the transfer of immovable property worth more than Rs.100/-, which could not have been transferred without it being registered.

The defendant-appellants pleaded that the plaintiff-respondent had separated himself from his real brothers, Shiv Charan, Sham Lal and Ram Swarup and was separate in mess for the last more than 30 years. Deceased Ram Swarup was staying with the appellants and on account of the services rendered by the appellants to Ram Swarup, he had suffered a decree in their favour on 22.4.1992. This was in the knowledge of the plaintiff-respondent. Besides, the plaintiff respondent had instituted a suit for partition,which was effected on 4.7.1997 and a **sanad takseem** was accordingly issued to that effect. The present suit was filed on 4.10.1997. The plaintiff-respondent had not raised any dispute qua the decree dated 22.4.1992 at the time of raising the dispute of partition, therefore, now it did not lie in his mouth to say that the decree was bad.

On the pleadings of the parties, the following issues were framed:-

1.Whether the plaintiff alongwith the defendant Nos.1 and 2 and late Shri Ram Swrup are co-sharers in physical possession of the agricultural land total measuring 42 kanals 6 marlas, situated within the revenue estate of village Atali, Tehsil Ballabgarh as mentioned in para No.2 of the plaint ? OPP

2. Whether the plaintiff is entitled for a decree of declaration

as prayed for ?OPP

3.Whether the suit of the plaintiff is hopeless time barred ? OPP.

4.Whether the suit of the plaintiff is not maintainable in the present form ?OPD.

5.Whether the plaintiff is estopped by his own acts, conducts to file the present suit ?OPD

6.Whether the suit of the plaintiff is barred by the principle of resjudicata under Order 2 Rule 2 C.P.C. and Section 10 and 11 of C.P.C. ?OPD

7.Whether the suit of the plaintiff is false, frivolous and vexatious ?OPD.

8.Whether the suit of plaintiff is entitled for a special compensatory costs u/s 35-A C.P.C. ?OPD

9. Whether the plaintiff has not come to the Hon'ble Court with clean hands ?OPD.

10.Whether the plaintiff has no cause of action to maintain the present suit ?OPD.

11.Whether the suit of the plaintiff has not been properly valued for purposes of Court fee ?OPD

12.Whether the suit is bad for non-joinder and mis-joinder of necessary parties ?OPD

13.Relief.

The trial Court dismissed the suit of the plaintiff-respondent and held that the suit was barred by limitation and further came to the conclusion that the plaintiff-respondent was in the knowledge of the decree but no finding however, was returned regarding the plea raised by the plaintiff-respondent regarding compulsory registration of the decree.

An appeal was preferred against the said judgment of the learned trial Court and the decree of trial Court was reversed which has resulted in the present appeal having been filed by the defendant-appellants.

It was contended by the counsel for the appellant that Pyare Lal, respondent,was separate in mess for the last 30 years which was duly established on record. Ram Swarup had been living with the appellants and it is a measure of his love and affection and recognition of the services rendered by the appellants that the property of the share of Ram Swarup was given within the family to the appellants. The decree was to the knowledge of the respondent but he choose not to challenge it and even at the time of effecting of partition, which was at his instance. No such challenge was made to the decree at that point of time. In view of this, it was sought to be contended that it should be inferred that there was a family settlement between the parties and on account of this, the decree which was suffered did not require any registration.

On the other hand,learned counsel for the respondent contended that the decree was bad as it require compulsory registration. In support of his contention, he had relied upon the judgment of the Hon'ble Supreme Court in **Bhoop Singh Versus Ram Singh and others**-AIR 1996 Supreme Court 196.

I have heard the counsel for the parties and am of the opinion that the appeal deserves to be succeed.

The learned lower Appellate Court while allowing the appeal filed by the plaintiff-respondents, relied upon the judgment of Bhoop Singh's case (supra) to say that the decree ought to have been compulsorily registered. On the other hand, reliance was sought to be placed on a judgment of the apex Court in **Bachan Singh Versus Kartar Singh and others** JT 2001(10 SC 64. In this judgment Hon'ble Supreme Court has observed as follows:-

> **“A consent decree passed by the court is not required to be registered under the provisions of the Indian Registration Act and, therefore, the view taken by the first appellate court was not legally correct and has been rightly set aside by the High Court. We are, therefore, in agreement with the view taken by the High Court.”**

Reverting back to the facts of the present case, one is not to loose sight of the fact that the plaintiff-respondent had separated from the family about

30 years back. The property belonging to Ram Swarup was given to his nephew. He was admittedly living with his other brothers i.e.,Sham Lal and Shiv Charan at the time of his death. There is a presumption of a family settlement. The whole family of Ram Swarup was living with him. Ex.D3 copy of the Ration Card in which Ram Swarup has been shown to be residing with his brothers Even oral family settlements are recognized in law. In view of this fact, no fault can be found in the decree which was validly suffered by Ram Swarup in favour of his nephews.

The challenge made by the plaintiff-respondent to the decree on the ground of fraud and misrepresentation was not substantiated by any evidence on record. Both the courts have recorded a concurrent finding to that effect .

The most glaring aspect of the matter is that in the partition suit which was instituted in the year 1996, no such plea regarding the share of the property of Ram Swarup was agitated. The partition was effected on 4.7.1997 and the Sanad Takseem was also sanctioned accordingly. Once the plaintiff had accepted the partition, he cannot be permitted to rake up the issue of the share of Ram Swarup at this stage. It was obvious that the proceedings in the instant case were motivated and a result of greed. Lastly, the decree was challenged after an inordinate delay of 5 years.,even though, it was in the knowledge of the plaintiff-respondent.

Taking all these factors cumulatively together, it can be safely said that the judgment of the learned lower Appellate Court was erroneous. The question of law that would arise in the present appeal is -

“Whether consent decree is required to be registered in view of the fact that there was evidence to suggest a family settlement or not?

The answer to this question has been given in the foregoing discussion and it is held that looking to the facts of the case,the decree was suffered as a result of a mutual settlement between the members of the same family and even if it is not registered, it would still be recognizable in the eyes of

law and bind the parties.

As a result thereof, the present appeal is allowed and the judgment of the learned lower Appellate Court is set aside.

August 11,2006 (MAHESH GROVER)
nk JUDGE